

Exhibit A

13-141

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
CLEARWATER HOLDING CORPORATION
d/b/a CLEARWATER BEACH CLUB,

Plaintiff,

-against-

LANDMARK AMERICAN INSURANCE COMPANY,

Defendant.
-----X

Dated Filed 10/3/14
Index No. 605174/14

SUMMONS

Plaintiff(s) designate Nassau
County as the place of trial.

The basis of the venue is the
Plaintiff's domicile

Plaintiff's address is
1875 Ocean Boulevard
Atlantic Beach, NY 11509

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 3, 2014

WEG AND MYERS, P.C.
Attorney for Plaintiff
Federal Plaza
52 Duane Street
New York, New York 10007
(212) 227-4210

Defendant(s) Address:
LANDMARK AMERICAN INSURANCE COMPANY
945 East Paces Ferry Road, Suite 1800
Atlanta, Georgia 30326-1160

And

LANDMARK AMERICAN INSURANCE COMPANY
201 Robert S. Kerr Avenue, Suite 600
Oklahoma City, Oklahoma 73102-4267

Weg
10/29/14

13-141

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
CLEARWATER HOLDING CORPORATION
d/b/a CLEARWATER BEACH CLUB,

Index No. 605774/14

Plaintiff,

COMPLAINT

-against-

LANDMARK AMERICAN INSURANCE COMPANY,

Defendant.
-----X

Plaintiff, CLEARWATER HOLDING CORPORATION d/b/a CLEARWATER
BEACH CLUB, by its attorneys, WEG AND MYERS, P.C., as and for its Complaint herein
allege as follows:

THE PARTIES

1. At all times hereinafter mentioned, Plaintiff CLEARWATER HOLDING CORPORATION d/b/a CLEARWATER BEACH CLUB ("Plaintiff") was and still is a domestic corporation, organized and existing under and by virtue of the laws of the State of New York.
2. Defendant LANDMARK AMERICAN INSURANCE COMPANY (hereinafter, "Landmark" or "Defendant") was and still is a foreign corporation, organized and existing under and by virtue of the laws of the state of Oklahoma.
3. At all relevant times, Landmark was authorized by the New York State Department of Financial Services to issue policies of insurance in the State of New York, including the policy issued to Plaintiff.

FACTUAL BACKGROUND

4. At all relevant times herein, Plaintiff was the owner of the property located at 1875 Ocean Boulevard, Atlantic Beach, New York 11509 (hereinafter, "Subject Premises").
5. Prior to October 29, 2012, Landmark, for good and valuable consideration, issued to Plaintiff a certain property policy of insurance bearing number LHD376218 (hereinafter, "Subject Policy") with effective dates of May 1, 2012 to May 1, 2013 and with a buildings coverage limit of \$2,526,890.00, wherein and whereby it covered all buildings at the Subject Premises against all risks of physical loss or damage, including, *inter alia*, damage caused directly or indirectly by wind.
6. At all relevant times herein, Plaintiff maintained an insurable interest in the Subject Premises.
7. At all relevant times herein, Plaintiff operated a private membership club, which among other things, provided its members with cabanas, lockers, changing rooms, restaurants and bars all located on the Subject Premises.
8. On or about October 29, 2012, Superstorm Sandy made landfall in and around New York, including but not limited to the areas where the Subject Premises was located.
9. As a result of Superstorm Sandy, Plaintiff suffered extensive wind damages to the Subject Premises in the amount of \$1,396,305.90.
10. In or about November of 2012, Plaintiff timely notified Landmark with respect to the physical loss and damage at the Subject Premises.
11. On or about November 13, 2012, Defendant having received notification of Plaintiff's losses sent an adjustment team to perform an inspection of the physical damage at the Subject Premises.

12. Plaintiff timely submitted a sworn statement in Proof of Loss to Defendant on or about September 19, 2013 for the damages it suffered to its real property located at the Subject Premises in the amount of \$1,604,754.50, an amount reflecting the whole loss and damage, less the deductible, for the Subject Premises.
13. Thereafter, Defendant, upon review of its adjustment team's inspection at the Subject Premises, determined that the specific damage that was caused solely by wind from Superstorm Sandy had an actual cash value of \$118,178.26, less a \$50,000 deductible, and issued Plaintiff payment in the amount of \$25,000 on December 19, 2012 and \$43,178.26 on March 1, 2013 which in the aggregate totaled \$68,178.26.
14. Subsequent to September 19, 2013, in consideration of the expenses of actual repairs completed, in conjunction with updated actual assessments of damages yet to be repaired, Plaintiff calculated its damages to be \$1,396,305.90.
15. To date, Plaintiff has only recovered \$118,178.26, which represents Defendant's determination of the actual cash value of the damage to the Subject Premises. Accordingly, Defendant has failed to compensate Plaintiff under the terms and conditions of the policy in the amount of \$1,278,127.64.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST LANDMARK
(Breach of Contract)

16. Plaintiff repeats, reiterates, and realleges each and every allegation contained in Paragraphs "1" through "15" above inclusively, with the same force and effect as though more fully set forth at length herein.
17. On or about October 29, 2012, while the Subject Policy was in full force and effect, Plaintiff suffered physical damage to the Subject Premises as a result of a windstorm which was covered under the Subject Policy.

18. As a result of the aforementioned loss, Plaintiff sustained a loss and damage to the Subject Premises due to wind in the amount of \$1,396,305.90.
19. Although Plaintiff duly submitted a claim to Landmark under the Policy and fully cooperated with Landmark, Landmark has failed to fully indemnify Plaintiff for its loss.
20. Landmark's failure to fully indemnify Plaintiff for its loss, although duly demanded, constitutes a breach of contract.
21. As a result of said breach, Plaintiff has suffered damages in the amount of \$1,278,127.64.

WHEREFORE, Plaintiff demands judgment on the First Cause of Action against Defendant Landmark in the amount of \$1,278,127.64; together with interest from October 29, 2012, including costs and disbursements, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 3, 2014

WEG AND MYERS, P.C.,
Attorneys for Plaintiffs
CLEARWATER HOLDING CORPORATION
d/b/a CLEARWATER BEACH CLUB.

By: 

Alexander C. Palasek
Federal Plaza
52 Duane Street, 2nd Floor
New York, New York 10007
(212) 227-4210

Index No. Year 2014
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

CLEARWATER HOLDING CORPORATION d/b/a CLEARWATER BEACH CLUB,

Plaintiff,

-against-

LANDMARK AMERICAN INSURANCE COMPANY,
Defendant.

SUMMONS AND COMPLAINT

Weg and Myers, P.C.

Attorneys for Plaintiff
Federal Plaza
52 Duane Street
New York, N.Y. 10007
(212) 227-4210

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: October 3, 2014

Signature

Print Signer's Name Alexander C. Palasek, Esq.

Service of a copy of the within

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

☐
Notice of
Entry

that the within is a (certified true copy of a
entered in the office of the clerk of the within named Court on

☐
Notice of
Settlement

that an Order of which the within is a true copy will be presented for
settlement to the Hon one of the judges
of the within named Court, at
on , at M.

Dated:

Weg and Myers, P.C.
Attorneys for
Federal Plaza
52 Duane Street
New York, NY 10007

TO
Attorney(s) for